

TELECOMMUNICATIONS AGREEMENT

This Agreement made and entered into this ____ day of _____, _____ (the "Effective Date") by and between the Kentucky Cabinet for Health and Family Services (herein referred to as "CHFS") with offices at 275 East Main Street, Frankfort, Kentucky 40621, and _____, a _____ corporation with its principal place of business at _____, _____, _____ ("Provider"). The parties are executing this Agreement to define their respective rights and responsibilities concerning access and transfer of data resident on the Commonwealth of Kentucky Medicaid Management Information System (hereinafter "KY MMIS") and the transmission of this data between CHFS or its agent Electronic Data Services ("EDS") and Medicaid providers, this data being owned by the CHFS, which retains all rights thereto.

WHEREAS, EDS, under contract with CHFS, operates and maintains the KY MMIS, which includes information for On-line Eligibility Verification/Pharmacy Claims Capture/Pharmacy Full Adjudication under the Automated Eligibility Verification System (AEVS) and under the Pharmacy Point of Service (POS) system, which respectively allow verification of Medicaid eligibility and submission/adjudication of Medicaid Pharmacy claims by Medicaid providers, and,

WHEREAS, EDS, acting as a telecommunications network vendor, wishes to provide services to Medicaid providers by operating a telecommunications network allowing electronic communication and transfer of Medicaid information between Medicaid providers, or their authorized designee, and the Commonwealth of KY MMIS,

NOW THEREFORE, in consideration of the mutual covenants, conditions and stipulations contained herein, the parties agree as follows:

1. SYSTEM ACCESS CHFS, through EDS, agrees to provide Provider with computer port access to Kentucky MMIS on-line information and transfer of this information via network to and from Provider's (or its authorized designee's) computer systems for the purpose of establishing on-line Medicaid eligibility and claims capture. CHFS agrees to transmit all provider and KY MMIS information via its network without alteration or retention enroute.

Provider or its authorized designee, submitting and receiving KY MMIS data and information, shall be registered with CHFS to submit and receive the same, utilizing software tested and approved by CHFS as being in the proper format and compatible with the KY MMIS AEVS system. Prior to the submission of any transactions to the KY MMIS production system, Provider agrees to submit test transactions to EDS for the purpose of determining that the transactions and responses comply with all requirements and specifications described in the Kentucky EDI Provider Manuals. Such determination shall be made solely by CHFS or EDS on its behalf. Provider shall maintain the capability to submit test transactions throughout the term of this Agreement.

Further, Provider agrees to submit to the KY MMIS only those individual transaction types for which specific approval has been received from CHFS or EDS on its behalf. Prior to the submission of any additional transaction types to the KY MMIS production system, or as a result of making changes to an existing transaction type or system, Provider agrees to submit test transactions for both the additional and any previously-approved transaction types to CHFS or EDS on its behalf. Additionally, Provider agrees that the KY MMIS data/information transmitted by it will be released only to the authorized party requesting such data/information.

2. APPROVALS It is understood that this Agreement is subject to on-going review and approval by the CHFS. Failure of CHFS to approve this Agreement or to re-approve this Agreement shall render it null and void, and, in such case, neither CHFS nor EDS shall be liable to Provider hereunder for any reason. CHFS may also direct modification to this Agreement. In such case, if Provider does not agree to those modifications, this Agreement shall be null and void; otherwise they shall be incorporated herein by reference. In addition, CHFS must approve, prior to distribution to any party, all marketing materials, news releases or communications of Provider that in any way refer to the services or parties covered by this Agreement.

CHFS must approve the language of all messages concerned with the transmission of KY MMIS data/information issued by EDS to authorized Medicaid providers or their authorized designee(s) prior to the transmission of any messages.

3. TERM The term of this Agreement shall be from the Effective Date through June 30, 2006. A new agreement may be executed on an annual basis, and may be subject to altered terms. Each new agreement will be subject to the approvals then required by CHFS and/or the Commonwealth of Kentucky.

4. VENDOR PERSONNEL Provider warrants that all persons assigned by it to perform its obligations under this Agreement are employees of Provider, are fully qualified to perform the work herein, and each such person, including but not limited to all employees, agents, and officers of Provider, shall execute a copy of the attached Confidentiality Agreement within thirty (30) days of the execution of this Agreement.

5. CHARGES/INVOICING CHFS and Provider agree that there will be no charge to either party for access to, transfer, or reporting of MMIS data under the MMIS. EDS shall be responsible for establishing the terms of service for its customers/subscribers consistent with the terms of this Agreement and for establishing its charges to its customers/subscribers for its services.

6. CONFIDENTIALITY Provider agrees to safeguard all Kentucky MMIS information, whether verbal, written, or otherwise, received from CHFS, or acquired by Provider in the performance of this Agreement. Provider recognizes that all such information constitutes confidential information that is proprietary and owned by CHFS. Provider shall hold all such information as confidential, and shall not disclose or divulge it without the prior written consent of CHFS and the enrolled recipient, his or her attorney, or his or her responsible parent or guardian, except as may otherwise be required by CHFS. Provider shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with Federal and State law.

The use or disclosure of information concerning recipients shall be limited to purposes directly connected with the administration of Kentucky's Medicaid program. This restriction also applies to the disclosure of information in summary, statistical, or other form that does not identify particular individuals. Provider agrees to comply with the provisions of 42 C.F.R. 431, Subpart F; the Privacy Act of 1974, P.L. 93-597, as amended; and all other applicable State and Federal laws. Provider shall also keep strictly confidential any and all information concerning recipients and providers, the business of the Commonwealth of Kentucky, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by CHFS and/or the Commonwealth of Kentucky. Provider shall instruct all of its officers, agents, and employees of this requirement.

Nothing herein shall prohibit the disclosure of information in summary, statistical, or other form to CHFS. Provider agrees to provide such information upon request; however, prior written authorization from CHFS is required before any data will be given to any other party. This provision shall survive termination or expiration of this Agreement.

7. PERMITTED USES OF MEDICAID RECIPIENT DATA EDS may use Medicaid recipient data to respond to Provider queries regarding Medicaid eligibility, in accordance with the following guidelines:

- Provider must adhere to all applicable confidentiality and privacy laws, regulations, and contractual provisions, and Provider must establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records.
- Provider must maintain records for three (3) years showing provider name, recipient name, provider identification number (which can be cross-referenced to a Medicaid certification number), the number of inquiries for each provider, the dates of the provider queries, and the dates the services were rendered.
- Provider is subject to random auditing by EDS, any authorized representative of CHFS or the Commonwealth, the U.S. Department of Health and the U.S. Comptroller General, the U.S. General Accounting Office or their authorized representatives, and that upon confirmation of contract violations, CHFS or EDS as its agent may require appropriate corrective action and/or terminate access to the data, depending upon the nature and degree of the violations.

8. VENDOR-TO-VENDOR TRANSACTIONS Vendor-to-vendor transactions are expressly forbidden.[??]

9. USE OF INTERNET With respect to use of the Internet to transfer data under this Agreement, Provider agrees:

1. Provider's use of the Internet is subject to prior approval by CHFS or EDS as its agent.
2. Provider agrees to follow and be bound by the HCFA Internet Security Policy, issued November 24, 1998, and as subsequently amended or superseded.
3. Provider shall notify CHFS through EDS of its intent to use the Internet for the transmittal of Privacy Act-protected and/or other sensitive information (as defined in the HCFA Internet Security Policy). This notification shall be in writing and shall include, at minimum, the following information:
 - Name and address of Provider
 - Type/nature of information being transmitted
 - Name of contact (e.g., CIO or accountable official)
 - Contact's telephone number and email address.
4. Provider shall NOT use the Internet to transmit information covered by the Privacy Act or that is otherwise sensitive before it receives written authorization from CHFS transmitted through EDS.

10. RECORD ACCESS/RETENTION Authorized personnel of the U.S. Department of Health and Human Services or other pertinent Federal agencies, authorized personnel of CHFS and other appropriate State entities, EDS, independent auditors acting on behalf of the State and/or Federal agencies, and the Comptroller General of the United States shall have the right of access to any books, documents, papers or other records which are pertinent to this Agreement in order to audit, examine and make excerpts of records. All records pertinent to this Agreement shall be maintained for a period of six (6) years.

11. INDEMNITY In recognition of the confidentiality of Kentucky MMIS data and information, Provider agrees to indemnify, defend, protect and hold harmless CHFS or EDS as its agent, and any of their employees, officers, or agents, from any claims for damages, losses or expenses to any person or firm resulting from the performance of services by Provider and from any claim for damages, losses or expenses to any person or firm resulting from willful, erroneous or negligent acts by Provider, its employees, officers, or agents, or arising out of the disregard of Kentucky or Federal Medicaid regulations or legal statutes, or failure to observe the laws of the Commonwealth of Kentucky or attendant with the publication, translation, reproduction, delivery, performance, use or disposition of any data processed in a manner not authorized by this Agreement or by Federal or State regulations or statutes. Provider shall be responsible for, and agrees to reimburse CHFS or EDS for any liquidated damages, actual damages or charges assessed, incurred or required to be paid by CHFS or EDS as a result of Provider's failure or inadequacy in performing any of its services or obligations hereunder. In such event, CHFS or EDS as its agent shall have the right to discontinue Provider's access to the Kentucky MMIS and will provide written explanation of the circumstances and conditions prompting such action. This provision shall survive termination/expiration of this Agreement.

12. LIMITATION OF LIABILITY NEITHER CHFS NOR EDS AS ITS FISCAL AGENT SHALL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. INDEPENDENT CONTRACTORS CHFS and Provider agree that each party is acting independent of the other and not as an agent, subcontractor, joint venturer or partner of the other party. Except as otherwise specified herein regarding payment of monies, each party agrees to bear all cost and expenses it may incur in regards to its obligations, efforts and performance hereunder.

14. TERMINATION This Agreement shall remain in effect unless a notice of termination is issued by CHFS upon its determination that Provider has failed to fulfill its obligations and responsibilities hereunder or that termination is in the best interests of CHFS.

Termination shall be effective upon receipt of notice sent via certified mail. Termination of this Agreement shall not release either party from any obligations set forth herein which shall survive this Agreement as noted herein or by their nature would be intended to apply after any termination.

15. CONFORMANCE WITH STATE AND FEDERAL REGULATIONS Provider agrees to comply with all State and Federal laws, regulations, and policies as they exist or as amended that are or may be applicable to this Agreement and its performance of its obligations hereunder, including those not specifically mentioned herein.

Provider agrees to comply with all requirements to safeguard the confidential nature of personnel medical records imposed by the federal Health Information Portability and Accountability Act (42 U.S.C. 1320d et seq. and regulations promulgated at 45 CFR Parts 160

and 164, as they may be amended from time to time.

Provider agrees to comply with all Federal and State laws prohibiting discrimination and assures that services will be provided without distinction on the basis of race, sex, color, national origin, or handicap and that no distinction is made on the basis of age except as the law allows. Provider agrees to comply with the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 (Public Law 101-336), all amendments to and all requirements imposed by the regulations issued pursuant to this act.

Provider hereby certifies compliance with Anti-Lobbying Law, Section 1935, Title 31 of the U.S. Code, implemented at 45 C.F.R. Part 93, Section 93.105 and 93.110, for persons entering into a grant or cooperative agreement over \$100,000.

Provider certifies compliance in providing or continuing to provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988 and implemented at 45 C.F.R. Part 76, Subpart F for grantees, as defined at 45 C.F.R. Part 76, Section 76.605 and 76.610.

Provider further certifies it and its principals meet all requirements found at 45 C.F.R. Part 76 for prospective participants in primary covered transactions, as defined at 45 C.F.R. Part 76, Section 76.105, 76.110, Debarment, Suspension, and other Responsibility Matters. Provider shall maintain adequate and separate accounting and fiscal records and account for all funds provided by any source to pay the cost of this contract.

16. INSPECTION OF WORK PERFORMED CHFS or EDS on its behalf, their employees or agents, or any authorized representative of the Commonwealth of Kentucky, the U.S. Department of Health and Human Services, the U.S. Comptroller General, the U.S. General Accounting Office, shall, at all reasonable times, have the right to enter Provider's premises or such other places where duties under this Agreement are being performed to inspect, monitor, or otherwise evaluate (including periodic systems testing) the work being performed. Provider and all subcontractors must provide reasonable access to all facilities and assistance to the State and Federal representatives. All inspections and evaluations shall be performed in such a manner as will not unduly delay work.

17. WAIVER It is agreed that no delay or omission by either party to exercise any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any responsibility, condition or agreement to be performed by the other party, or any breach thereof, shall not be construed as a waiver of any succeeding breach thereof, or of any responsibility, condition, or agreement herein. No change, waiver or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver or discharge is sought.

18. ASSIGNMENT Provider may not sell, transfer, assign or dispose of this Agreement, in whole or in part, or any right, title or interest therein, to any other party without the prior, express written consent of CHFS. Such consent, if granted, shall not relieve Provider of its obligations under the Agreement. At purported sale, transfer, assignment, or disposition of this Agreement or any right or interest therein without CHFS' prior written consent is void.

19. ENTIRE AGREEMENT This Agreement contains the entire agreement between CHFS and Provider and supersedes any previous understanding, commitment or agreement, oral or written,

concerning the subject matter hereof. Any change to this Agreement will be effective only when set forth in writing and identified as a change and signed by an authorized representative of each party.

20. CHOICE OF LAW AND FORUM This Agreement and the relationship of the parties shall be construed and interpreted in accordance with the laws of the Commonwealth of Kentucky. Any action relating to this Agreement and the performance or breach thereof may only be brought in the state and federal courts located in Franklin County, Kentucky.

IN ACCORDANCE with the above, the parties have enacted this Agreement.

CHFS

PROVIDER

Signed

Signed

Name

Name

Title

Title

Date

Date